

TESTIMONY OF MR. KEVIN M. FOLEY
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BLOOMBERG TRADEBOOK LLC
BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND
GOVERNMENT SPONSORED ENTERPRISES
HOUSE COMMITTEE ON FINANCIAL SERVICES
REGARDING
“REVIEWING U.S. CAPITAL MARKET STRUCTURE: PROMOTING
COMPETITION IN A CHANGING TRADING ENVIRONMENT”
OCTOBER 30TH, 2003

INTRODUCTION. MR. CHAIRMAN AND MEMBERS OF THE
SUBCOMMITTEE. MY NAME IS KEVIN FOLEY, AND I AM PLEASED TO
TESTIFY ON BEHALF OF BLOOMBERG TRADEBOOK REGARDING
“REVIEWING U.S. CAPITAL MARKET STRUCTURE: PROMOTING
COMPETITION IN A CHANGING TRADING ENVIRONMENT.” THE TOPIC IS
BOTH IMPORTANT AND TIMELY.

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LOCATED IN NEW YORK CITY. BLOOMBERG L.P. PROVIDES MULTIMEDIA,
ANALYTICAL AND NEWS SERVICES TO MORE THAN 175,000 TERMINALS
USED BY 250,000 FINANCIAL PROFESSIONALS IN 100 COUNTRIES

WORLDWIDE. BLOOMBERG TRACKS MORE THAN 135,000 EQUITY SECURITIES IN 85 COUNTRIES, MORE THAN 50,000 COMPANIES TRADING ON 82 EXCHANGES AND MORE THAN 406,000 CORPORATE BONDS. BLOOMBERG NEWS IS SYNDICATED IN OVER 350 NEWSPAPERS, AND ON 550 RADIO AND TELEVISION STATIONS WORLDWIDE. BLOOMBERG PUBLISHES MAGAZINES AND BOOKS ON FINANCIAL SUBJECTS FOR THE INVESTMENT PROFESSIONAL AND NON-PROFESSIONAL READER.

BLOOMBERG TRADEBOOK IS AN ELECTRONIC AGENCY BROKER SERVING INSTITUTIONS AND OTHER BROKER-DEALERS. WE COUNT AMONG OUR CLIENTS MANY OF THE NATION'S LARGEST INSTITUTIONAL INVESTORS REPRESENTING — THROUGH PENSION FUNDS, MUTUAL FUND AND OTHER VEHICLES — THE SAVINGS OF MILLIONS OF ORDINARY AMERICANS.

BLOOMBERG TRADEBOOK SPECIALIZES IN PROVIDING INNOVATIVE TOOLS THAT SUBDIVIDE LARGE ORDERS INTO SMALL ORDERS AND ELIMINATE THE TRADITIONAL BARRIER BETWEEN THE UPSTAIRS MARKET AND THE TRADING FLOOR. THROUGH THAT TECHNIQUE WE BRING UPSTAIRS LIQUIDITY DIRECTLY INTO CONTACT WITH SMALL RETAIL ORDERS, WITH THE OPTIONS MARKET-MAKERS AND WITH PROGRAM TRADING ORDER FLOW. IN THE PROCESS WE CONSOLIDATE WHAT HAS BEEN A FRAGMENTED MARKET AND WE INCREASE THE EFFICIENCY OF

THE MARKET. OUR CLIENTS HAVE REWARDED OUR CREATIVITY AND OUR SERVICE BY TRUSTING US WITH THEIR BUSINESS, ALLOWING US TO REGULARLY TRADE MORE THAN 180 MILLION SHARES A DAY.

AN OPPORTUNITY TO DRAMATICALLY IMPROVE THE CAPITAL MARKETS. THE HOUSE FINANCIAL SERVICES COMMITTEE HAS LONG BEEN CONCERNED WITH POTENTIAL CONFLICTS WITHIN THE FINANCIAL SERVICES INDUSTRY THAT MIGHT LESSEN MARKET EFFICIENCY OR COMPROMISE INVESTOR PROTECTIONS. THE COMMITTEE HAS DEVOTED SIGNIFICANT TIME AND EFFORT TO ADDRESSING SOME OF THESE CONFLICTS IN THE CONTEXT OF ANALYSTS, ACCOUNTANTS AND OTHERS.

RECENT CONFLICTS RELATING TO THE NYSE ARE ALSO WORTHY OF CONGRESSIONAL AND COMMISSION ATTENTION. ADDRESSING THESE CONFLICTS WILL IMPROVE OUR MARKETS AND FURTHER THE GOALS OF THE SECURITIES LAWS. INDEED, THESE ISSUES ARE ALL THE MORE PRESSING GIVEN THE IMPORTANCE OF THE NYSE AS A MARKET CENTER, ITS ROLE AS THE PRIMARY SELF-REGULATORY ORGANIZATION FOR THE NATION'S LARGEST SECURITIES FIRMS AND ITS STATUS AS A GOVERNMENT-SPONSORED MONOPOLY.

THE SCANDALS REVEALED AT THE NYSE IN 2003 LOOK STRIKINGLY LIKE THE SCANDALS THAT RACKED THE NASDAQ MARKETPLACE IN 1995. THE NASDAQ PRICE-FIXING SCANDAL OF THE MID-1990S RESULTED IN SANCTIONS BY THE SEC AND THE DEPARTMENT OF JUSTICE AND

DECISIONS ON MARKET STRUCTURE INTENDED TO COMBAT CONFLICTS OF INTEREST IN THE NASDAQ MARKET BY ENHANCING TRANSPARENCY AND COMPETITION. SPECIFICALLY THE SEC'S 1996 ISSUANCE OF THE ORDER HANDLING RULES PERMITTED ELECTRONIC COMMUNICATIONS NETWORKS — ECNS — TO FLOURISH OVER THE PAST SEVEN YEARS, BENEFITING CONSUMERS AND THE MARKETS GENERALLY. THESE RULES — AIMED PRIMARILY AT EXCHANGE SPECIALISTS AND OVER-THE-COUNTER MARKET MAKERS — WERE DESIGNED TO PROMOTE MARKET TRANSPARENCY IN THE NASDAQ MARKET BY PERMITTING THE DEVELOPMENT OF ELECTRONIC SYSTEMS THAT FACILITATE TRADING IN SECURITIES.

AS HAS OFTEN BEEN OBSERVED, SUNLIGHT IS THE BEST DISINFECTANT. INDEED, THE INCREASED TRANSPARENCY PROMOTED BY THE SEC'S ORDER HANDLING RULES AND THE SUBSEQUENT INTEGRATION OF ECNS INTO THE NATIONAL QUOTATION MONTAGE NARROWED NASDAQ SPREADS BY NEARLY 30% IN THE FIRST YEAR FOLLOWING ADOPTION OF THE ORDER HANDLING RULES. THESE, AND SUBSEQUENT REDUCTIONS IN TRANSACTIONAL COSTS, CONSTITUTE SIGNIFICANT SAVINGS THAT ARE NOW AVAILABLE FOR INVESTMENT THAT FUELS BUSINESS EXPANSION AND JOB CREATION.

WHILE THE COMPLETE LIST OF REFORMS ORDERED BY THE SEC TO PROMOTE TRANSPARENCY IS LONG AND VARIED, ALL OF THESE

CHANGES, INCLUDING THE PROMULGATION OF THE ORDER HANDLING RULES, WERE ANIMATED BY THE SAME UNDERLYING PRINCIPLE—NAMESLY THAT SUNLIGHT—INCREASED TRANSPARENCY—PRODUCES THE MOST HONEST AND EFFICIENT MARKETS.

CHAIRMAN OXLEY HAS ASKED “WHY DOES THE NYSE CONTROL 80 PERCENT OF THE TRADING VOLUME OF ITS LISTED COMPANIES WHEN NASDAQ CONTROLS ONLY ABOUT 20 PERCENT OF THE VOLUME OF ITS LISTED COMPANIES?” THE ANSWER IS SIMPLE — THERE HAVE HISTORICALLY BEEN A SERIES OF BARRIERS TO COMPETITION IN THE NYSE MARKET.

FROM THE ONLY RECENTLY DISCARDED RULE 390, WHICH SUBSTANTIALLY RESTRICTED NYSE MEMBER FIRMS FROM TRADING STOCKS OF COMPANIES THAT LISTED BEFORE APRIL 1979 ANYWHERE BUT ON THE EXCHANGES, TO RULE 500, WHICH MAKES IT EXTREMELY DIFFICULT FOR A LISTED COMPANY TO DELIST, THERE HAVE EXISTED A NUMBER OF BARRIERS THAT HAVE THE EFFECT OF CENTRALIZING ORDER FLOW, IMPAIRING INTER-MARKET COMPETITION AND DEPRIVING THE MARKET OF THE OPPORTUNITY TO TEST WHETHER ELECTRONIC COMPETITORS COULD BRING THE SAME BENEFITS TO THE NYSE INVESTOR AS THEY HAVE TO THE NASDAQ INVESTOR.

TO UNLEASH COMPETITION AND PROMOTE AN EFFICIENT MARKET,
CONGRESS AND THE COMMISSION SHOULD CONSIDER THE FOLLOWING:

REPEAL THE TRADE-THROUGH RULE. THE TWENTY-YEAR-OLD TRADE-THROUGH PROVISION OF THE INTER-MARKET TRADING SYSTEM (ITS) PLAN STATES THAT WHEN A MARKET MAKER RECEIVES AN ORDER, IT CANNOT EXECUTE IT AT A PRICE INFERIOR TO ANY FOUND ON ANOTHER MARKET WITHOUT GIVING A “FILL” TO THE BETTER-PRICED ORDER. TWENTY YEARS AGO INVESTORS COULDN’T CHOOSE BETWEEN PRICE, LIQUIDITY AND SPEED, BECAUSE SOPHISTICATED ROUTING AND EXECUTION TECHNOLOGY DID NOT EXIST. TODAY, TECHNOLOGY PROVIDES THOSE OPTIONS, BUT THE TRADE THROUGH RULE STYMIES CHOICE — FORCING INVESTORS TO GO THROUGH SLOWER, MANUAL MARKETS. THAT MAY HAVE MADE SOME SENSE BEFORE DECIMALIZATION — WHEN THERE WERE ONLY EIGHT PRICE POINTS PER DOLLAR. TODAY, HOWEVER, SPEED AND CERTAINTY OF EXECUTION IS MORE IMPORTANT TO MANY INVESTORS THAN CAPTURING THE LAST PENNY. CURRENTLY, THE RULE PROTECTS INEFFICIENT MARKETS WHILE DEPRIVING INVESTORS OF THE CHOICE OF ANONYMITY, SPEED OR LIQUIDITY BY MANDATING INSTEAD THAT INVESTORS RECEIVE THE THEORETICAL “BEST PRICE”.

WE NEED TO TAKE ANOTHER LOOK AT WHETHER SUCH A RULE IS NECESSARY OR EVEN USEFUL. ULTIMATELY, WE THINK THE RULE SHOULD BE REPEALED. AS AN INTERIM STEP, HOWEVER, THE SEC COULD EXTEND THE EXISTING *DE MINIMIS* EXEMPTION. THE EXEMPTION PERMITS TRANSACTIONS IN EXCHANGE-TRADED FUNDS EFFECTED AT A PRICE NOT MORE THAN THREE CENTS AWAY FROM THE BEST BID AND OFFER QUOTED IN THE NATIONAL MARKET SYSTEM. THE COMMISSION COULD EXTEND THAT EXEMPTION TO TRANSACTIONS IN ALL NYSE-LISTED STOCKS THAT ARE EFFECTED AT A PRICE NOT MORE THAN FIVE CENTS AWAY FROM THE BEST BID AND OFFER QUOTED IN THE NATIONAL MARKET SYSTEM.

FACILITATE DISPLAY OF NYSE LISTED STOCKS IN THE ADF. IN 1999, NASDAQ PETITIONED THE SEC TO EXPAND ITS MONOPOLY BY CENTRALIZING QUOTATION DISPLAY AND ORDER EXECUTION IN A “SUPERMONTAGE” NASDAQ WOULD CONTROL. RECOGNIZING THE POTENTIAL ANTICOMPETITIVE IMPACT OF SUPERMONTAGE, THE SEC WISELY MADE ITS JANUARY 2001 APPROVAL OF SUPERMONTAGE CONTINGENT ON NASD’S MEETING CERTAIN CRITICAL PRECONDITIONS INTENDED TO ENSURE THAT PARTICIPATION IN SUPERMONTAGE WAS TRULY VOLUNTARY.

PREEMINENT AMONG THOSE PRECONDITIONS WAS THE ESTABLISHMENT OF AN “ALTERNATIVE DISPLAY FACILITY” (ADF). THIS FACILITY IS INTENDED TO PERMIT THE DISPLAY OF BOTH NASDAQ AND NYSE LISTED STOCKS. THE ADF HAS BEEN DISPLAYING NASDAQ STOCKS DURING 2003, PROVIDING A COMPETITIVE SPUR TO THE NASDAQ “SUPERMONTAGE” AND SERVING AS A CHECK ON ANTI-COMPETITIVE BEHAVIOR.

THE ADF COULD — AND IS CLEARLY INTENDED TO — PROVIDE A SIMILAR TONIC FOR THE NYSE MARKET. IT IS IMPERATIVE THAT THE SEC UNDERTAKE THE STEPS NECESSARY TO FACILITATE THE PROMISED DISPLAY OF NYSE LISTED STOCKS IN THE ADF AS SOON AS POSSIBLE.

ADDRESS CONFLICTS REGARDING NYSE’S ROLE AS A GOVERNMENT-SPONSORED INFORMATION MONOPOLY. THE FINANCIAL SERVICES COMMITTEE HAS LONG HELD THAT MARKET DATA IS THE “OXYGEN” OF THE MARKETS. ENSURING THAT MARKET DATA IS AVAILABLE IN A FASHION WHERE IT IS BOTH AFFORDABLE TO RETAIL INVESTORS AND WHERE MARKET PARTICIPANTS HAVE THE WIDEST POSSIBLE LATITUDE TO ADD VALUE TO THAT DATA ARE HIGH PRIORITIES.

BEFORE THE 1970S, NO STATUTE OR RULE REQUIRED SELF-REGULATORY ORGANIZATIONS (SROS) TO DISSEMINATE MARKET

INFORMATION TO THE PUBLIC OR TO CONSOLIDATE INFORMATION WITH INFORMATION FROM OTHER MARKET CENTERS. INDEED, THE NYSE, WHICH OPERATED THE LARGEST STOCK MARKET, CLAIMED AN OWNERSHIP INTEREST IN MARKET DATA, SEVERELY RESTRICTING ACCESS TO MARKET INFORMATION. MARKETS AND INVESTORS SUFFERED FROM THIS LACK OF TRANSPARENCY.

AT THE URGING OF THE SEC, CONGRESS RESPONDED BY ENACTING THE SECURITIES ACTS AMENDMENTS OF 1975. THESE AMENDMENTS EMPOWERED THE SEC TO FACILITATE THE CREATION OF A NATIONAL MARKET SYSTEM FOR SECURITIES, WITH MARKET PARTICIPANTS REQUIRED TO PROVIDE — IMMEDIATELY AND WITHOUT COMPENSATION — INFORMATION FOR EACH SECURITY THAT WOULD THEN BE CONSOLIDATED INTO A SINGLE STREAM OF INFORMATION.

AT THE TIME, CONGRESS CLEARLY RECOGNIZED THE DANGERS OF DATA-PROCESSING MONOPOLIES. THE REPORT ACCOMPANYING THE 1975 AMENDMENTS EXPRESSLY WARNS THAT:

“PROVISION MUST BE MADE TO INSURE THAT THIS CENTRAL PROCESSOR IS NOT UNDER THE CONTROL OR DOMINION OF ANY PARTICULAR MARKET CENTER. ANY EXCLUSIVE PROCESSOR IS, IN EFFECT, A PUBLIC UTILITY, AND THUS IT MUST FUNCTION IN A

MANNER WHICH IS ABSOLUTELY NEUTRAL WITH RESPECT TO ALL MARKET CENTERS, ALL MARKET MAKERS, AND ALL PRIVATE FIRMS.” REPORT OF THE SENATE COMM. ON BANKING, HOUSING, AND URBAN AFFAIRS TO ACCOMPANY S.249, S. REP. NO. 94-75, 94TH CONG., 1ST SESS. 11 (1975).

EVEN AS NOT-FOR-PROFIT ENTITIES, SROS HISTORICALLY HAVE EXPLOITED THE OPPORTUNITY TO SUBSIDIZE OTHER COSTS (E.G., COST OF MARKET OPERATION, MARKET REGULATION, MARKET SURVEILLANCE, MEMBER REGULATION) THROUGH THEIR GOVERNMENT-SPONSORED MONOPOLY ON MARKET INFORMATION FEES. THE INCENTIVE TO EXPLOIT THIS MONOPOLY POSITION WILL BE EVEN STRONGER AS SROS CONTEMPLATE FOR-PROFIT FUTURES AND NEW LINES OF BUSINESS.

THE SEC HAS RECOGNIZED THIS THREAT, PROPOSING A COST-BASED LIMIT TO MARKET-DATA REVENUES AND FUNDING CERTAIN SRO COSTS, PRINCIPALLY THE COST OF MARKET REGULATION, THROUGH THOSE MARKET-DATA REVENUES. BLOOMBERG STRONGLY SUPPORTS THE COMMISSION’S PROPOSED COST-BASED LIMITS ON MARKET INFORMATION FEES, BUT WE DISAGREE WITH THE COMMISSION’S PROPOSAL TO INCLUDE THE COSTS OF REGULATION IN THE CALCULATION OF THESE COSTS.

RESTRICTING COSTS TO THE DIRECT COSTS OF GATHERING, CONSOLIDATING AND DISSEMINATING INFORMATION WOULD MAKE IT EASIER FOR THE COMMISSION TO SET APPROPRIATE RATES, RATES THAT WOULD PREVENT THE SROS FROM EXPLOITING THEIR GOVERNMENT-CONFERRED MONOPOLY POSITION WITH RESPECT TO THE DATA. OTHER SOURCES OF FUNDING AVAILABLE TO THE SROS FOR REGULATION AND OPERATIONS (I.E., PRINCIPALLY MEMBER FEES AND LISTING FEES) ARE UNRELATED TO THE MONOPOLY THE SROS HAVE OVER DATA SALES AND ARE INSTEAD, TO SOME EXTENT AT LEAST, SUSCEPTIBLE TO THE FORCES OF COMPETITION. THEY MAY THUS OFFER SOME PROTECTION AGAINST THE RISK THAT SROS WILL EXACT MONOPOLY RENTS AND USE THEIR CAPTIVE RATE BASES TO SUBSIDIZE OTHER ACTIVITIES.

A YEAR AGO, BLOOMBERG L.P., IN CONSULTATION WITH TWO DISTINGUISHED ECONOMISTS — DR. GEORGE HAY, THE FORMER DIRECTOR OF ECONOMICS OF THE ECONOMIC POLICY OFFICE OF THE ANTITRUST DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE AND DR. ERIK SIRRI, THE FORMER CHIEF ECONOMIST OF THE SEC — SUBMITTED TO THE SEC A DISCUSSION PAPER ENTITLED “COMPETITION, TRANSPARENCY, AND EQUAL ACCESS TO FINANCIAL MARKET DATA”. THE PAPER DELINEATED THE WAYS IN WHICH THE EXCHANGES, IN THE ABSENCE OF STRUCTURAL PROTECTIONS, MAY ABUSE THEIR MONOPOLY POWER OVER THE COLLECTION OF MARKET INFORMATION TO THE

DETRIMENT OF CONSUMERS, COMPETITORS AND THE NATIONAL MARKET SYSTEM. THE PAPER PROPOSED STRUCTURAL CHANGES TO ADDRESS THESE POSSIBLE ABUSES. THE CONCERNS EXPRESSED IN THE PAPER HAVE BEEN BORNE OUT BY BLOOMBERG L.P.'S YEAR-LONG DISAGREEMENT WITH THE NYSE OVER PROPOSED RESTRICTIONS ON THE DISSEMINATION OF DECIMALIZED INFORMATION TO INVESTORS.

REALIZE THE PROMISE OF DECIMALIZATION – THE LIQUIDITY QUOTE EXPERIENCE. UNDER CHAIRMAN OXLEY'S LEADERSHIP, THE CONGRESS PUSHED HARD AND SUCCESSFULLY TO ENCOURAGE THE SWITCH TO DECIMALS. THE ADDITIONAL TRANSPARENCY BROUGHT BY DECIMALS HAS, INDEED, REDUCED THE COST OF TRANSACTIONS, BENEFITING INVESTORS AND THE MARKETS.

THUS, BLOOMBERG L.P. WAS ENCOURAGED WHEN, LATE LAST YEAR, THE NYSE FILED WITH THE SEC A PROPOSED RULE CHANGE THAT WOULD PERMIT THE DISPLAY AND USE OF QUOTATIONS IN STOCKS TRADED ON THE NYSE TO SHOW ADDITIONAL DEPTH IN THE MARKET FOR THOSE STOCKS.

THE GOOD NEWS — THE NYSE'S "LIQUIDITY QUOTE" PROPOSAL COULD RESULT IN THE DISPLAY OF ADDITIONAL DEPTH IN A FORM WHICH WAS ITSELF EXECUTABLE FOR TRADING PURPOSES. THE BAD NEWS —

THE NYSE HAD PROPOSED TO EXPLOIT ITS STATUS AS A GOVERNMENT-SPONSORED MONOPOLY TO REQUIRE SOME VENDORS TO SIGN CONTRACTS THAT WOULD PLACE SEVERE RESTRICTIONS ON THE USE OF LIQUIDITY QUOTE DATA. THOSE RESTRICTIONS WOULD HAVE REQUIRED VENDORS TO ADVANTAGE THE NYSE OVER COMPETING MARKET CENTERS WHEN IT CAME TO THE DISPLAY OF DECIMALIZED DATA WHILE ALSO PRECLUDING BLOOMBERG FROM ADDING VALUE TO THIS DATA IN A WAY THAT BENEFITS INVESTORS AND THE MARKETS. THE NYSE'S ORIGINAL PROPOSAL WOULD HAVE PROHIBITED DATA VENDORS FROM INTEGRATING NYSE LIQUIDITY QUOTE DATA WITH DATA FROM OTHER MARKET CENTERS.

IN SHORT, THE PROMISE OF ENHANCED TRANSPARENCY AT THE HEART OF DECIMALIZATION WOULD HAVE BEEN THWARTED. INSTEAD, THE NYSE PROPOSED TO LEVERAGE ITS GOVERNMENT-SPONSORED MONOPOLY OVER MARKET DATA DOWNSTREAM TO UNFAIRLY DISADVANTAGE NOT ONLY COMPETITORS IN THE INFORMATION MARKET, BUT ALSO COMPETITORS IN THE TRADING MARKET. ALONG WITH OTHER MARKETS, TRADING VENUES AND MARKET DATA VENDORS, MIDDLE MARKET AND SMALLER INVESTORS WHO CAN'T AFFORD TO MAINTAIN THEIR OWN COMPUTER FACILITIES WOULD HAVE BEEN PARTICULARLY DISADVANTAGED.

WHEN FACED WITH COMPARABLE TERMS IN THE CONTEXT OF THE NYSE'S OPENBOOK PROPOSAL, THE SEC STATED THAT "THE NYSE'S PROPOSED RESTRICTIONS ON VENDOR RE-DISSEMINATION OF OPENBOOK DATA, INCLUDING THE PROHIBITION ON PROVIDING THE FULL DATA FEED AND PROVIDING ENHANCED, INTEGRATED, OR CONSOLIDATED DATA FOUND IN THESE AGREEMENTS ARE ON THEIR FACE DISCRIMINATORY, AND MAY RAISE FAIR ACCESS ISSUES UNDER THE ACT." Securities Exchange Act Release 44138 (December 7, 2001).

IN LIGHT OF THIS ADMONITION, IT IS UNFORTUNATE THAT THE NYSE SOUGHT TO IMPOSE IN THE LIQUIDITY QUOTE CONTEXT THE SAME CONDITIONS THAT SO TROUBLED THE SEC IN THE OPENBOOK CONTEXT. THESE RESTRICTIVE LIQUIDITY QUOTE CONTRACTS RAISED THE OPENBOOK ISSUES — AND MORE — IN THE CONTEXT OF FAR MORE CRITICAL DATA. THE FACT THAT THE NYSE CHOICE NOT TO MAKE THE CONTRACTS THEMSELVES PART OF THE FORMAL NYSE LIQUIDITY QUOTE SUBMISSION — DESPITE THE FACT THAT THE CONTRACTS CLEARLY MEET THE DEFINITION OF AN SRO RULE AND SHOULD HAVE BEEN SUBMITTED — LIMITED THE OPPORTUNITIES FOR MEANINGFUL PUBLIC INPUT.

AFTER EXTENSIVE REVIEW AND ANALYSIS, THE SEC ON APRIL 2, 2003, UNANIMOUSLY STRUCK DOWN THE NYSE'S RESTRICTIVE CONTRACTS. ON THE NYSE'S EFFORTS TO ESTABLISH BARRIERS THAT

PREVENT VENDORS FROM INTEGRATING LIQUIDITY QUOTES WITH QUOTATIONS FROM OTHER MARKETS, THE COMMISSION HELD THESE BARRIERS TO BE “A MORE SUBSTANTIAL RESTRICTION ON THE ABILITY OF VENDORS TO PROVIDE USEFUL DATA THAN POSED BY OPENBOOK AND WOULD, UNLIKE OPENBOOK, IMPOSE ON USERS INTEGRATION COSTS WITH RESPECT TO IMMEDIATELY EXECUTABLE, MARKET-WIDE QUOTATIONS IN A MANNER THAT WOULD: (1) BE INCONSISTENT WITH FOSTERING “COOPERATION AND COORDINATION WITH PERSONS ENGAGED IN PROCESSING INFORMATION WITH RESPECT TO SECURITIES”; (2) “BE DESIGNED TO PERMIT UNFAIR DISCRIMINATION BETWEEN CUSTOMERS”; AND (3) IMPEDE, RATHER THAN REMOVE IMPEDIMENTS TO, A “FREE AND OPEN MARKET AND A NATIONAL MARKET SYSTEM.” Securities Exchange Act Release No. 47614 (April 2, 2003), SEC File No. SR-NYSE-2002-55.

UNFORTUNATELY, THE NYSE’S REVISED DISPLAY REQUIREMENTS -- WHICH ARE AT LEAST IN THEORY INTENDED TO REFLECT THE CHANGES ORDERED BY THE SEC -- DON’T REMEDY THE DEFICIENCIES IDENTIFIED BY THE SEC. INDEED, THE REVISED DISPLAY REQUIREMENTS CONTINUE TO DISADVANTAGE THE MIDDLE MARKET AND SMALL INVESTORS, AS WELL AS MANDATING THE IMPOSITION OF A SERIES OF INTRUSIVE ATTRIBUTION REQUIREMENTS THAT WOULD REDUCE TRANSPARENCY AND SEVERELY DISADVANTAGE COMPETING MARKET CENTERS.

AS A RESULT, BLOOMBERG L.P. HAS COMMENCED A DENIAL OF ACCESS PROCEEDING AT THE SEC. INITIAL COMPLAINTS AND RESPONSES WERE FILED THIS SUMMER. WE BELIEVE THE FINAL RESOLUTION OF THIS CONTROVERSY WILL HAVE AN ENORMOUS IMPACT ON THE ULTIMATE EFFICIENCY OF OUR MARKETS AND THE LEVEL OF PROTECTION PROVIDED INVESTORS IN A DECIMALIZED ENVIRONMENT.

THIS CONTROVERSY UNDERSCORES THAT THE CONGRESS AND THE COMMISSION SHOULD GIVE STRONG CONSIDERATION TO UPDATING THE VENDOR DISPLAY RULE TO REFLECT THE REALITIES OF DECIMALIZED TRADING. THE VENDOR DISPLAY RULE WAS ADOPTED WHEN THERE WERE EIGHT PRICE POINTS TO THE DOLLAR AND IT REQUIRES CONSOLIDATED INFORMATION ONLY WITH RESPECT TO THE BEST BID AND OFFER. UNLESS THE VENDOR DISPLAY RULE IS UPDATED, INVESTORS RISK HAVING LESS USEFUL INFORMATION THAN EXISTED PRIOR TO DECIMALIZATION.

I'D CONCLUDE MY DISCUSSION OF LIQUIDITY QUOTE BY NOTING THAT THIS IS YET ANOTHER EXAMPLE OF THE ONGOING CONTROVERSY REGARDING SROs PROPOSING MARKET DATA FEES WITHOUT COST JUSTIFICATION. THE FEES THE NYSE PROPOSES TO CHARGE FOR ACCESS TO LIQUIDITY QUOTE DATA ON A REAL-TIME BASIS ARE APPROXIMATELY EQUAL TO THE FEES THE NYSE CURRENTLY CHARGES FOR ACCESS TO ALL

OTHER NYSE MARKET DATA ON A REAL-TIME BASIS — ABOUT \$50 A MONTH PER USER. THESE FEES WOULD EFFECTIVELY ***DOUBLE*** THE AVERAGE FEES INVESTORS PAY TODAY FOR NYSE REAL-TIME DATA IF THE INVESTORS SUBSCRIBE TO LIQUIDITY QUOTE. SINCE DECIMALIZATION HAS REDUCED THE VALUE OF THE EXISTING BBO DATA, THE INVESTORS WOULD EFFECTIVELY BE PAYING TWICE TO RECEIVE INFORMATION EQUIVALENT IN ECONOMIC VALUE TO WHAT THEY USED TO RECEIVE BEFORE DECIMALIZATION. THE MARKETS AND INVESTORS WOULD BENEFIT FROM GREATER SCRUTINY OF MARKET DATA FEES AND COSTS.

OPPOSE EFFORTS TO CREATE NEW OWNERSHIP RIGHTS IN DATA CRITICAL TO THE FUNCTIONING OF THE MARKET. AS THIS COMMITTEE WELL KNOWS, IN PAST CONGRESSES BOTH THE NYSE AND NASDAQ HAVE SUPPORTED LEGISLATION WHICH WOULD CREATE A NEW AND UNPRECEDENTED PROPERTY RIGHT IN FACTUAL DATA, INCLUDING EVEN MONOPOLY MARKET DATA. IN HEARINGS IN THE LAST CONGRESS, THE FINANCIAL SERVICES COMMITTEE HEARD A NUMBER OF MARKET PARTICIPANTS EXPRESS STRONG OPPOSITION TO THIS PROPOSAL. INDEED, THE RESTRICTIVE CONTRACT THE NYSE ATTEMPTED TO IMPOSE IN THE LIQUIDITY QUOTE CONTEXT IS SIMPLY AN EFFORT BY THE NYSE TO LEVERAGE ITS MONOPOLY POWER TO CREATE AN EFFECTIVE

OWNERSHIP RIGHT IN DATA – A RIGHT THAT THE CONGRESS HAS
REFUSED TO GRANT LEGISLATIVELY.

A FEW WEEKS AGO, H.R. 3261, THE “DATABASE AND COLLECTIONS
OF INFORMATION MISAPPROPRIATION ACT” WAS INTRODUCED AND
REFERRED TO THE HOUSE JUDICIARY COMMITTEE. THE LEGISLATION IS
SUFFICIENTLY CONTENTIOUS THAT AN INCREDIBLY DIVERSE ARRAY OF
PUBLIC AND PRIVATE ENTITIES — RANGING FROM THE U.S. CHAMBER OF
COMMERCE TO THE AMERICAN CIVIL LIBERTIES UNION, THE EAGLE
FORUM TO CONSUMERS UNION, THE AMERICAN CONSERVATIVE UNION TO
THE NATIONAL ACADEMY OF SCIENCES — HAVE ALREADY VOICED
STRONG OPPOSITION.

WHILE MUCH MARKET DATA HAS BEEN EXEMPTED OUT OF THE
PROPOSED LEGISLATION, THE BILL CONTINUES TO POTENTIALLY BAR
ACCESS TO MUCH OTHER INFORMATION CRITICAL TO MARKET
PARTICIPANTS -- INCLUDING INFORMATION ON COMMODITY FUTURES
AND GENERAL ECONOMIC DATA -- AND HENCE MAY WELL HAVE
IMPORTANT RAMIFICATIONS FOR MARKET TRANSPARENCY.

THE NASDAQ MARKET — ACCESS FEES. I’VE FOCUSED PRIMARILY
ON ISSUES RELEVANT TO THE NYSE MARKET TODAY, BUT I’D OBSERVE

THAT AN IMPORTANT DEBATE IS CURRENTLY UNDERWAY IN THE NASDAQ MARKET REGARDING THE FUTURE OF ACCESS FEES.

BLOOMBERG HAS LONG BELIEVED THAT ACCESS FEES SHOULD BE ABOLISHED FOR ALL SECURITIES AND ALL MARKETS AND WE HAVE URGED THE SEC TO TAKE THIS IMPORTANT STEP. THERE IS NO GOOD REASON WHY MARKET PARTICIPANTS ENTERING LIMIT ORDERS SHOULD RECEIVE A SUBSIDY FROM PARTICIPANTS ENTERING MARKETABLE LIMIT OR MARKET ORDERS, AND PLENTY OF GOOD REASONS WHY THEY SHOULD NOT. THERE IS ALSO, OF COURSE, NO DEFENSIBLE ARGUMENT FOR PAYMENT FOR FLOW OF MARKET ORDERS.

THE HARM DONE BY ACCESS FEES TO MARKET STRUCTURE OCCUR IN TWO WAYS, IN THEIR IMPACT ON THE BEHAVIOR OF THOSE TO WHOM THE FEES WOULD BE CHARGED AND IN THEIR IMPACT ON THOSE WHO WOULD RECEIVE THE FEES. FIRST, BY PLACING A TAX UPON MARKET ORDERS AND MARKETABLE LIMIT ORDERS, ACCESS FEES TEND TO DISTORT AND ALTER MARKET BEHAVIOR. SECOND, ACCESS FEES MAKE IT POSSIBLE FOR REBATES TO BE PAID TO LIMIT ORDER PROVIDERS.

THE COMPETITION FOR REBATES EXACERBATES THE PROBLEM OF LOCKED AND CROSSED MARKETS. IT ALSO HAS ENCOURAGED SUB-PENNY JUMPING, WHICH OCCURS WHEN A MARKET PARTICIPANT

IMPROVES A BID OR AN OFFER FOR AN ECONOMICALLY MEANINGLESS INCREMENT SIMPLY IN ORDER TO RECEIVE A REBATE. THERE IS AN ECONOMIC SWING IN THE COST INCURRED BY A PARTY THAT HITS A BID OR TAKES AN OFFER AND THEREBY FOREGOES THE REBATE PAYABLE FOR LIMIT ORDERS. THE HIT-OR-TAKE TRADER INCURS AN EXPLICIT COST, IN THE FORM OF THE ACCESS FEE ITSELF, AND INCURS AN IMPLICIT COST IN NOT RECEIVING THE REBATE. THAT CAN BE SIGNIFICANT AS A PERCENTAGE OF THE OVERALL TRANSACTION COST, PARTICULARLY FOR RETAIL ORDERS. IF THE TYPICAL RETAIL TICKET CHARGE — EVEN ONE BY A “DISCOUNT” BROKER OR AN ON-LINE BROKER — IS BETWEEN \$10 AND \$25 PER TRADE, THE ACCESS FEE SWING WOULD REPRESENT BETWEEN 20% AND 50% OF THAT COST.

WE BELIEVE THE ABOLITION OF ACCESS FEES WOULD GREATLY REDUCE MANY MARKET STRUCTURE ILLS AND PROVIDE FOR A BETTER NATIONAL MARKET SYSTEM.

CONCLUSION. THIS COMMITTEE HAS BEEN IN THE FOREFRONT OF THE MARKET STRUCTURE DEBATE AND I APPRECIATE THE OPPORTUNITY TO DISCUSS HOW THESE SEEMINGLY ABSTRACT ISSUES HAVE CONCRETE REAL-WORLD IMPACT ON INVESTORS.

THE SCANDALS REVEALED AT THE NYSE IN 2003 LOOK STRIKINGLY LIKE THE PRICE-FIXING SCANDALS THAT RACKED THE NASDAQ MARKET IN THE MID-1990S. THEN AS NOW, ENHANCED TRANSPARENCY AND COMPETITION WILL GO A LONG WAY TOWARD BUILDING INVESTOR CONFIDENCE AND PROMOTING THE EFFICIENT FUNCTIONING OF THE MARKETS.

WHEN CREDIT RATING AGENCIES DOWNGRADED ENRON'S DEBT TO JUNK STATUS ON NOVEMBER 28, 2001, THE NYSE HALTED TRADING BECAUSE OF AN ORDER IMBALANCE. AFTER THE NYSE SPECIALIST SHUT DOWN HIS POST, ECNs TRADED MORE THAN 10 MILLION SHARES IN OTHER MARKETS AS THE STOCK WENT FROM \$2.60 TO \$1.10 OVER THE NEXT THIRTY MINUTES.

IF ECNs MIGHT ACTUALLY CONTRIBUTE TO THE MAINTENANCE OF ORDERLY MARKETS IN WAYS THAT ARE POTENTIALLY SUPERIOR TO THE ROLE OF THE SPECIALIST, ISN'T THAT FURTHER EVIDENCE THAT THE TRADE-OFF OF FOREGONE EFFICIENCY, TRANSPARENCY AND CHOICE MIGHT BE A VERY BAD DEAL FOR INVESTORS?

THE NEUTRALITY, TRANSPARENCY, FAIRNESS AND INNOVATION ECNs COLLECTIVELY BRING TO THE NASDAQ MARKET HAVE DRAMATICALLY INCREASED COMPETITION AND EFFICIENCY IN THAT

MARKET. NYSE INVESTORS SHOULD NOT BE DEPRIVED OF THE
OPPORTUNITY TO TEST WHETHER INCREASED COMPETITION COULD
BRING THE SAME BENEFITS TO THEIR MARKET.

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